

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1207 of 1996

in

SPECIAL CIVIL APPLICATION No 3133 of 1993

with

LETTERS PATENT APPEAL NO.1309 OF 1996

in

SPECIAL CIVIL APPLICATION NO. 3133 OF 1993

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

RASIKLAL CHANDULAL SHAH

Versus

CENTRAL EXCISE AND CUSTOMS DEPARTMENT

Appearance:

MR MB GANDHI for Appellants

MR JAYANT PATEL for Respondent No. 1, 2

CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE A.L.DAVE

Date of decision: 25/10/1999

ORAL JUDGEMENT (Per Panchal, J.)

#. Both these appeals, which are instituted under Clause 15 of the Letters Patent, are directed against judgment dated August 21, 1996, rendered by the learned Single Judge in Special Civil Application No.3133 of 1993. The appeals involve determination of common questions of facts as well as law and, therefore, we propose to dispose them of by this common judgment.

#. The original petitioners, i.e. Rasiklal Chandulal Shah and Chinulal Shah, are the owners of Block No.2 of Stadium House, situated at Navrangpura, Ahmedabad. An area admeasuring 99.04 sq. metres was let out by the original owners to Central Excise and Customs Department as well as Union of India by a lease deed dated June 15, 1975 at the rate of Rs.1.25 per sq. feet. The Directorate of Estates, Government of India, had issued an office memorandum on September 1, 1982 specifying that the rent should be got reassessed from the Central Public Works Department ('CPWD' for short) on the expiry of period of five years from the date of original assessment or the date of issuance of the office memorandum whichever was later and after every five years thereafter. The grievance made by the petitioners was that in spite of the issuance of office memorandum, the rent was not revised from 1982 to 1987 and from 1987 to 1992. Under the circumstances, the original petitioners instituted Special Civil Application No.3133 of 1996 and prayed the Court to issue a writ of mandamus directing the respondents to approach the CPWD for reassessment of the rent of the property for the period from 1982 to August 31, 1987 and to pay reasonable market rent assessed by the CPWD. The petitioners further prayed to direct the respondents to execute the lease deed with effect from September 1, 1987 and to make payment of rent at the revised rate of Rs.5330/- per month to them.

#. An affidavit in reply was filed on behalf of the respondents adopting the reply which was filed by the respondents in Special Civil Application No.2397 of 1993. In the said reply which was filed by the respondents in Special Civil Application No.2397 of 1993, it was contended that belated claim for revision of rent for the period from 1982 to 1987 should not be entertained by the Court. It was stressed in the said reply that petition under Article 226 was not maintainable in view of the provisions of Section 28 of the Bombay Rents, Hotel and

Lodging House Rates Control Act, 1947. It was also prayed in the said reply that in view of the alternative remedy available to the petitioners under the Rent Act, the petition should be dismissed.

#. After hearing the parties, the learned Single Judge has directed the respondents to pay rent to the petitioners for the period 1982 to 1987 in accordance with the certificate dated October 24, 1994 issued by the CPWD fixing the average rent at Rs.3170/-, after making adjustments of the amount paid in excess or short pursuant to the interim orders passed by the Court in the petitions. It was also clarified that, if any excess amount is paid, the same shall be adjusted against rent for the subsequent years. The above referred two directions have given rise to Letters Patent Appeal No.1309 of 1996 which is filed by the department whereas the original petitioners have filed Letters Patent Appeal No.1207 of 1996 challenging that part of the judgment of the learned Single Judge by which the relief pertaining to the interest to be paid on arrears of rent is denied.

#. We have heard learned counsel for the parties at length. The submission that the claim for rent from September 1, 1982 to August 31, 1987 is barred by principles of delay and laches and, therefore, the impugned judgment should be set aside has no merits. Though the power under Article 226 to issue an appropriate writ is discretionary and inordinate delay in making the motion for a writ may be adequate ground for refusing to exercise the discretion, it is well settled that no hard and fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and question of exercise of discretion has to be decided in view of the facts of each case. It is relevant to notice that the revision of rent was dependent on the assessment which was to be made by CPWD and CPWD made the assessment for the first on October 24, 1994. Though the original petitioner had made application dated September 21, 1981, requesting the department to revise the rent as per office memorandum of 1972, no action at all was taken by the department in terms of the said office memorandum. Thereafter, office memorandum dated September 1, 1982 was issued by Directorate of Estates, Government of India, directing the departments concerned to revise the rent on fulfilment of certain conditions. Even thereafter, also no steps were taken by the department either to revise the rent or to get reasonable rent assessed by CPWD. The

CPWD assessed the rent for the first time on October 24, 1994, after filing of the petition. Under the circumstances, it cannot be said that there was any delay on the part of the original petitioner in approaching the Court. The learned Single Judge while dealing with the submission advanced by the learned Additional Central Government Standing Counsel regarding delay and laches in filing the petition has adverted to several reported decision of the Supreme Court on the point and held that there is no justification in refusing relief of reasonable rent to the original petitioner on the basis of certificate which was issued in the year 1994 for the period from 1982 to 1987. We are in complete agreement with the view expressed by the learned Single Judge and we hold that the learned Single Judge was justified in entertaining the prayer made by the petitioner for refusing the rent for the period from September 1, 1982 to August 31, 1987.

#. The contention that the High Court had no jurisdiction to entertain the petition under Article 226 of the Constitution in view of the provisions of Section 28 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, cannot be accepted. Article 226 not being one of those provisions of the Constitution which may be changed by ordinary legislation, the powers under Article 226 cannot be taken away or curtailed by any legislation short of amendment of the Constitution. It is well settled the even where a statutory provision bars the jurisdiction of Courts, generally, it will not bar the jurisdiction of the High Court under Article 226. Having regard to the facts of the case, it cannot be said that there was inherent lack of jurisdiction in entertaining petition filed by the petitioner under Article 226 of the Constitution and, therefore, the plea that the impugned judgment should be set aside as the High Court had no jurisdiction to entertain the petition under Article 226 will have to be rejected and is hereby rejected.

#. The plea that in view of the alternative remedy available under the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the petition should not have been entertained and the petitioner should have been relegated to the alternative remedy available to him under the said Act also cannot be accepted at this stage. It may be stated that another owner of the premises had filed Special Civil Application No.6435 of 1991 claiming similar such relief and therein notice was ordered to be issued to the respondents, i.e. the department, at the admission stage. The department

had filed reply contesting the petition, inter alia, on the ground that alternative remedy was available under the Rent Act and, therefore, the petition should not be entertained. However, after hearing the learned counsel for the parties at length, the learned Single Judge had thought it fit to issue Rule and had entertained the petition. Thereafter, Special Civil Application No.3133 of 1993, out of which Letters Patent Appeal No.1309 of 1996 arises, was placed for admission hearing and as petition involving similar question was admitted earlier, this petition was also admitted and Rule was issued therein. It is well settled that once the petition is admitted, it should not be rejected on the ground that alternative remedy is available to the petitioner (see *Hirday Narain v. Income Tax Officer, Bareilly*, AIR 1971 SC 33, paragraph 12). The petition filed by the original petitioner was not only entertained by the learned Single Judge, but was heard on merits of the case. Moreover, with reference to rent to Special Civil Application No.2398 of 1993, the Enforcement Directorate had addressed a letter dated March 19, 1996 to the Additional Central Government Standing Counsel and requested him to bring to the notice of the Court instructions contained in the said letter. By the said letter, the department had shown its readiness and willingness to pay rent based on recognized principle of valuation as per the Government's usual practice in this regard, i.e. Rs.6600/- per month with effect from June 13, 1987 and Rs.12,440/- per month with effect from June 13, 1992 and had left the matter specifically to the decision of the High Court. When the department had agreed to pay revised rent on the basis of recognized principle of valuation from June 13, 1987 and subsequently from June 13, 1992, it would have been unreasonable to relegate the original petitioner to alternative remedy available to him under the Rent Act for the purpose of revision of rent from September 1, 1982 to August 31, 1987. Having regard to all these circumstances, we are of the opinion that no error was committed by the learned Single Judge in entertaining the petition on merits, though plea of alternative remedy available under the Rent Act was raised.

#. The argument that determination of average rent at the rate of Rs.3170/- per month for the relevant period is unreasonable has no merits at all. The learned Single Judge has given cogent and convincing reasons as to why average of the market rent for the relevant period should be at Rs.3170/- per month. Those reasons are to be found in paragraph 4 and 5 of the impugned judgment. It is not in dispute that under certificate dated October

24, 1994, the CPWD had assessed the rent of the subject premises between Rs.2620/- and Rs.3721/-. The assessment was made in accordance with the principles laid down by the Directorate of CPWD and as per the prevailing market rate in the locality. As the department had agreed to pay the rent based on recognized principle of valuation at the rate of Rs.6600 per month with effect from June 13, 1987 and Rs.12,440/- with effect from June 13, 1992 in Special Civil Application No.2398 of 1993, in our view, the learned Single Judge was justified in taking average of the two figures mentioned in the certificate dated October 24, 1994 for the period from 1982-87 and holding that the rent should be fixed at the rate of Rs.3170/- for the relevant period. The criteria adopted by the learned Single Judge for determining the rent on average basis cannot be said to be unreasonable or arbitrary so as to warrant interference of this Court in the present appeal. Therefore, the challenge to determination of rent at the rate of Rs.3170/- per month will have to be negated.

#. Thus, for all these reasons, we do not find any substance in any of the contentions urged on behalf of the appellants in Letters Patent Appeal No.1309 of 1996 and the same is liable to be dismissed.

##. So far as appeal filed by the owner of the property claiming interest on arrears of rent is concerned, we find that the learned Single Judge has exercised discretion of not granting interest to the owner of the property for arrears of rent. The exercise of the discretion cannot be said to be unreasonable or arbitrary so as to warrant interference by this Court in the appeal. In fact, the department could not pay the revised amount of rent because of non-availability of certificate from CPWD for which the department cannot be penalized. Having regard to the fair stand which was taken by the department, as is reflected in its letter dated March 19, 1996, we are of the opinion that the learned Single Judge was justified in not entertaining the prayer made by the owner of the property to direct the respondents to pay arrears of rent with interest. On overall view of the matter, we do not think that any error is committed by the learned Single Judge in not awarding interest to the owner of the property so far as arrears of rent are concerned. Under the circumstances, Letters Patent Appeal No.1204 of 1996 filed by the owner of the property claiming interest is also liable to be dismissed.

##. For the foregoing reasons, both the appeals fail

and are dismissed with no orders as to costs.

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